

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
BROOKLYN DIVISION

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IN RE

SHERRIAN CUMBERBATCH

DEBTOR

CHAPTER 7

CASE NO. 17-40294

JUDGE: Nancy Hershey Lord

MOTION DATE: July 19, 2017

MOTION TIME: 2:30 p.m.

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**PLEASE TAKE NOTICE** that upon the annexed affirmation of Shari S. Barak, a member of the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Select Portfolio Servicing, Inc. as Servicer for The Bank of New York Mellon, f/k/a, the Bank of New York, as Trustee for CWABS, Inc., Asset-Backed Certificates, Series 2005-3 ("Movant") will move this Court as set forth below:

JUDGE: HON. Nancy Hershey Lord

RETURN DATE & TIME: July 19, 2017 at 2:30 p.m.

COURTHOUSE: United States Bankruptcy Court  
271 Cadman Plaza East  
Brooklyn, NY 11201

RELIEF REQUESTED: The proposed order will seek to vacate the automatic stay imposed by 11 U.S.C. § 362(a) generally described as 204 Ada Drive, Staten Island, NY 10314, pursuant to 11 U.S.C. § 362(d)(1) based upon the total debt due to Movant, resulting in Movant's lack of adequate protection or, pursuant to 11 U.S.C. § 362(d)(2), inasmuch as the estate has no equity in the aforementioned property with regard to the subject property.

**PLEASE TAKE FURTHER NOTICE**, that answering affidavits, if any, to the relief requested, must be served upon and received by Shapiro, DiCaro & Barak, LLC at their offices at One Huntington Quadrangle, Suite 3N05, Melville, NY 11747 and filed with the Clerk of the United States Bankruptcy Court for the Eastern District of New York at United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, NY 11201 no later than seven (7) days prior to the return date of this motion.

Dated: May 8, 2017  
Melville, New York

/s/Shari Barak

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Shari S. Barak  
Managing Attorney  
Shapiro, DiCaro & Barak, LLC  
Attorneys for Select Portfolio Servicing, Inc. as  
Servicer for The Bank of New York Mellon, f/k/a,  
the Bank of New York, as Trustee for CWABS,  
Inc., Asset-Backed Certificates, Series 2005-3  
One Huntington Quadrangle, Suite 3N05  
Melville, NY 11747  
Telephone: (631) 844-9611  
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TO: SERVICE LIST

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
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CASE NO. 17-40294

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**AFFIRMATION IN SUPPORT OF  
ENTRY OF AN ORDER GRANTING  
RELIEF FROM THE AUTOMATIC STAY**

Shari S. Barak, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District Court for the Eastern District of New York, hereby affirms the following to be true under penalty of perjury:

1. I am a member with the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Select Portfolio Servicing, Inc. as Servicer for The Bank of New York Mellon, f/k/a, the Bank of New York, as Trustee for CWABS, Inc., Asset-Backed Certificates, Series 2005-3 ("Movant"), a secured creditor of Sherrian Cumberbatch ("Debtor"). As such, I am fully familiar with the facts and circumstances of this case.

2. I make this Affirmation in support of the within request for an Order Granting Relief from the automatic stay, for cause, pursuant to 11 U.S.C. § 362(d)(1) and (2).

3. Jurisdiction is conferred on this Court by the provisions of 28 U.S.C. § 1334. This is a proceeding to terminate and annul the automatic stay and is therefore a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Movant is a secured creditor of Debtor pursuant to a note executed by Debtor on March 26, 2005 whereby Debtor promised to repay the principal amount of \$267,750.00 plus interest to Countrywide Home Loans, Inc. (the "Note"). To secure repayment of the Note, Debtor and Julien Cumberbatch (non-filing "Co-Borrower") granted Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Home Loans, Inc. a mortgage, which was duly recorded in the Richmond County Office of the City Register on May 24, 2005 in Document Number: 45972 (the "Mortgage," Note and Mortgage, collectively, as the "Loan"), encumbering real property located at 204 Ada Drive, Staten Island, NY 10314 (the "Property"). The terms of the Loan were modified by agreement effective October 1, 2009 entered into by and between Mortgage Electronic Registration Systems, Inc., as nominee for Bank of America, N.A. and the Debtor creating a new principal balance in the amount of \$327,804.41 (the "Loan Modification Agreement"). The Loan was assigned to Movant as memorialized by instrument executed January 13, 2015 and duly recorded on January 30, 2015 ("Assignment of Mortgage"). Copies of the Note, Mortgage, Loan Modification Agreement, and Assignment of Mortgage are annexed hereto as **Exhibit "A."**

5. Upon information and belief, the Debtor herein own(s) the Property.

6. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about January 25, 2017.

7. The Mortgage was in default on the day the Debtor filed this bankruptcy. Based upon said default, Movant initiated foreclosure proceedings in the Supreme Court of the State of New York, County of Richmond, under index number 135089/2015. A Summons and Complaint were filed on January 30, 2015. The filing of the instant bankruptcy stayed said action. A copy of the Summons and Complaint is annexed hereto as **Exhibit "B."**

8. Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan. As a result, the Mortgage remains due for the April 1, 2012 payment and each subsequent payment thereafter.

9. The amount of delinquency due as of April 7, 2017 under the Mortgage is as follows:

30 Defaulted Monthly Payments at \$1,509.40 each (April 2012 through September 2014)	\$45,282.00
12 Defaulted Monthly Payments at \$1,653.65 each (October 2014 through September 2015)	\$19,843.80
7 Defaulted Monthly Payments at \$1,798.99 each (October 2015 through April 2016)	\$12,592.93
5 Defaulted Monthly Payments at \$2,253.80 each (May 2016 through September 2016)	\$11,269.00
7 Defaulted Monthly Payments at \$2,289.61 each (October 2016 through April 2017)	\$16,027.27
Suspense	<u>\$(67.00)</u>
Total Delinquencies	\$104,948.00

10. A copy of the Relief from Stay-Real Estate and Cooperative Apartments ("Affidavit") is annexed hereto as **Exhibit "C."**

11. Upon information and belief, as a result of the total debt due and owing, Movant has been required to advance monies for taxes and insurance to protect its security interest.

12. Moreover, in view of the total debt due to Movant and in light of the monies being expended by Movant for taxes and insurance, Movant is no longer adequately protected. The automatic stay must be vacated for cause pursuant to 11 U.S.C. § 362(d)(1).

13. As set forth in the Affidavit, as of April 7, 2017, the approximate debt due and owing to Movant equals \$452,906.08. The debt is accruing interest at a rate of 5.125% per annum.

14. Based upon the Broker's Price Opinion ("BPO"), the Property has an estimated fair value of approximately \$335,000.00. A copy of the BPO is annexed hereto as **Exhibit "D."** As indicated in paragraph 13 herein above, the total debt to Movant equals \$452,906.08. As such,

there is no dispute that the debt due to the Movant exceeds the value of the Property. By the Debtor's own valuation, the estate has no equity in the Property sought to be foreclosed. Accordingly, relief from the automatic stay is also warranted under 11 U.S.C. § 362(d)(2).

15. Movant, according to the laws of the State of New York and the terms and conditions of the Mortgage, desires to continue and/or commence foreclosure proceedings with respect to the Property.

16. The Debtor, Debtor's Attorney, the Chapter 7 Trustee, the Office of the United States Trustee and all creditors that have filed a notice of appearance have each been duly served with the within Notice of Motion, Affirmation, Exhibits and proposed Order Vacating Stay, as more fully set forth in the annexed affidavit of mailing.

17. No prior application has been made for the relief requested herein.

18. Debtor executed a promissory note secured by a mortgage or deed of trust. The promissory note is either made payable to Creditor or has been duly indorsed. Creditor, directly or through an agent, is the holder of the promissory note. Creditor is the original mortgagee or beneficiary or the assignee of the mortgage or deed of trust.

19. The entity which has the right to foreclose is: The Bank of New York Mellon, f/k/a, the Bank of New York, as Trustee for CWABS, Inc., Asset-Backed Certificates, Series 2005-3 by virtue of being the holder and owner of the note.

**WHEREFORE**, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) and (2) as to the aforementioned Property; allowing Movant, its agents, assigns or successors in interest, leave to exercise its rights pursuant to the Note and Mortgage including but not limited to foreclose the Mortgage secured by the subject Property; and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: May 8, 2017  
Melville, New York

/s/Shari Barak

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Shari S. Barak  
Managing Attorney  
Shapiro, DiCaro & Barak, LLC  
Attorneys for Select Portfolio Servicing, Inc. as  
Servicer for The Bank of New York Mellon, f/k/a,  
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